ALLIANZ GENERAL INSURANCE COMPANY (MALAYSIA) BHD v. GHAM POH CHAI

HIGH COURT MALAYA, KUALA LUMPUR
YUSRIN FAIDZ YUSOFF JC
[ORIGINATING SUMMONS NO: WA-24NCC-614-12-2024]
4 AUGUST 2025

Abstract – *(i) While an insurer may require the claimant to furnish supporting documents before disbursing payment, this requirement presupposes that the claim is still under evaluation and has not yet been adjudicated. Once judgment is entered, however, the duty to satisfy it arises from the judgment itself, not from subsequent administrative or regulatory instruments; (ii) The mere assertion of reputational harm or regulatory procedure cannot displace a claimant's statutory entitlement to enforce a judgment through winding-up proceedings, especially when the debt is clear, final and remain unsatisfied.*

CIVIL PROCEDURE: *Injunction – Fortuna injunction – Injunction to restrain presentation of winding-up petition – Statutory notice demanding payment of judgment sum issued under s. 466(1) of Companies Act 2016 – Whether compliance with judgment sum contingent upon outstanding documentation – Whether s. 195 of Financial Services Act 2013 could be invoked to invalidate statutory notice – Whether there was bona fide dispute of judgment sum – Whether intended petition had chance of success – Whether mere assertion of reputational harm and regulatory procedure could displace claimant's statutory entitlement to enforce judgment*

This case concerned an application for a *Fortuna* injunction brought by the applicant to restrain the respondent from presenting a winding-up petition. The Sessions Court had entered judgment against the applicant, an insurance company, ordering it to pay the respondent, who was the insured under a private vehicle policy. Subsequently, correspondence between the parties ensued concerning the mechanism of payment. The applicant requested the respondent to complete an E-Transfer Form and to furnish his income tax number, purportedly as part of an internal payment requirement, which the respondent complied. Despite this, the applicant did not make payment, and continued to request additional documents, asserting that the claim involved a vehicle classified as 'Beyond Economic Repair' ('BER'), and that such documents ('BER documents') were required under the applicable insurance policy and guidelines issued by Bank Negara Malaysia ('BNM') on 1 July 2024. The respondent, nevertheless, took the position that the judgment had been obtained through a court process, and that the applicant was under a legal obligation to comply with the judgment regardless of any unresolved insurance formalities. The respondent issued a statutory notice pursuant to s. 466(1)(a) of the Companies Act 2016 ('CA') demanding payment of the

judgment sum. The said statutory notice was received by the applicant. The applicant reiterated its demand for the BER documents to be furnished. Without issuing any specific denial to the statutory demand and apprehending that a winding-up petition might imminently be presented, the applicant filed this originating summons seeking urgent relief in the form of a *Fortuna* injunction. The applicant contended that the presentation of such a petition would constitute an abuse of the court's process and inflict irreparable harm upon its commercial standing and reputation. The issues that arose were (i) whether the intended petition had no chance of success; and (ii) whether such petition might produce irreparable damage to the applicant.

Held (dismissing application):

(1a) The guidelines were issued pursuant to ss. 47(1), 123(1) and 143(2) of Financial Services Act 2013 ('FSA') which empower Bank Negara Malaysia ('BNM') to prescribe standards of business conduct for licensed insurers and takaful operators. Its stated objective is to promote fair, timely, and transparent claims settlement practices. However, its scope is clearly directed at regulating the handling of claims during the ordinary course of insurance operations. (para 22)

(1b) While an insurer may require the claimant to furnish supporting documents before disbursing payment, this requirement presupposes that the claim is still under evaluation and has not yet been adjudicated. Once the matter has proceeded to court and culminated in a final judgment, the insurer's discretion to accept or reject the claim ceases to operate. The original claim is effectively replaced by the judgment, which crystallises the insurer's liability. Compliance with that judgment is no longer contingent upon outstanding documentation, and any attempt to impose such a condition post-judgment is contrary to the finality of the court's decision. Therefore, the applicant's reliance on BNM's Claims Settlement Practices guideline to justify withholding payment of a judgment sum was misconceived. (para 23)

(1c) The judgment in question was delivered on 12 July 2024, in a suit filed as early as 10 January 2023. The guideline which was issued on 1 July 2024 did not form part of the evidential or legal framework during the Sessions Court proceedings, nor could it have been raised or considered by the trial court when determining liability. The applicant could not now retroactively invoke a regulatory guideline issued after the close of pleadings and shortly before judgment to impose fresh conditions on its obligation to comply with the court's order. Once judgment is entered, the duty to satisfy it arises from the judgment itself, not from subsequent administrative or regulatory instruments. (para 24)

(2) Section 195 of the FSA does not prohibit the respondent from issuing the statutory notice in this case. What it prohibits is the presentation of a winding-up petition without first obtaining the prior written approval of BNM. Should the respondent proceed to file a petition without such approval, that step may then be challenged and, if warranted, injuncted and/or set aside. At this juncture, however, no petition has been filed or is shown to be imminent. Section 195 could not therefore be invoked to invalidate the statutory notice or to restrain the respondent from exercising its statutory entitlement to serve the notice and seek BNM's approval in due course for the presentation of the intended petition. (para 31)

(3) The applicant's complaint amounted to nothing more than a general fear of reputational damage. Such concerns were insufficient. The so-called irreparable harm was speculative and did not alter the legal reality that a judgment debt remains unpaid. Moreover, the applicant had not provided any concrete proof of solvency or shown that it was in a financial position to immediately satisfy the judgment. While it may be tempting to assume that an insurance company, by virtue of their size and declared assets, are financially sound, such assumptions carry little legal weight. The test for commercial solvency is not based on balance sheet strength or theoretical asset values, but on whether the company can meet its debts as they fall due. A company may appear robust on paper yet still be commercially insolvent if it withholds payment of a clear and immediate liability. Where a final judgment has been entered, the obligation to pay is immediate, and attempts by insurers to delay compliance through procedural manoeuvring or regulatory technicalities cannot be condoned. (paras 34 & 35)

(4) The present application bore the familiar hallmarks of a tactical response, invoking procedural devices not out of genuine legal necessity, but to defer payment and frustrate enforcement. The *Fortuna* injunction was thus characterised as a calculated manoeuvre to delay the respondent's lawful exercise of statutory rights under the guise of preserving corporate reputation. There was no basis to conclude that irreparable harm justified the grant of an injunction in the present case. The supposed reputational injury, even if genuine, did not override the respondent's statutory right to pursue enforcement of a final judgment through the winding-up process. (paras 37 & 38)

(5) The applicant had not established any *bona fide* dispute in respect of the judgment sum. The debt was clear, final and remain unsatisfied. The mere assertion of reputational harm or regulatory procedure could not displace the respondent's statutory entitlement to enforce a judgment through winding-up proceedings. In light of these findings, the application for *Fortuna* injunction was dismissed. (para 39)

Case(s) referred to:

Affin Bank Bhd v. Datuk Ahmad Zahid Hamidi [2005] 1 CLJ 521 HC ***(refd)***

Fortuna Holdings Pte Ltd v. The Deputy Commissioner Of Taxation Of The Commonwealth Of Australia [1978] VR 83 ***(refd)***

Kris Heavy Engineering & Construction Sdn Bhd v. Lewis & Co [2017] CLJU 964; [2017] 1 LNS 964 HC ***(refd)***

Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd [2002] 3 CLJ 380 CA ***(refd)***

Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd [2007] 3 CLJ 295 CA ***(refd)***

Pacific & Orient Insurance Co Bhd v. Mazlan Ahmad & Ors [2016] 2 CLJ 444 HC ***(dist)***

Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy [2011] 1 CLJ 947 CA ***(refd)***

Setia Fontaines Sdn Bhd v. Pro Tech Enterprise Sdn Bhd [2023] 5 CLJ 814 HC ***(refd)***

V Medical Services M Sdn Bhd v. Swissray Asia Healthcare Co Ltd [2025] 4 CLJ 282 FC ***(refd)***

Legislation referred to:

Companies (Winding-Up) Rules 1972, r. 23

Companies Act 2016, ss. 465(1)(e), 466(1)(a), (3)

Financial Services Act 2013, ss. 47(1), 123(1), 143(2), 195

For the applicant - Thayakugan Rajendram, Sabrina Mohamed Ameen & Leong Zheng Yang; M/s Othman Hashim & Co

For the respondent - Melissa Kaur Manakh Ram Singh; M/s Melissa Ram

Reported by Suhainah Wahiduddin

JUDGMENT

Yusrin Faidz Yusoff JC:

Introduction

[1] This case concerns an application for a *Fortuna* injunction brought by the applicant to restrain the respondent from presenting a winding-up petition. While the legal framework is familiar, the underlying theme is as old as commerce itself: a debtor facing judgment who seeks, not relief from liability, but delay in its enforcement. History is replete with examples of empires and enterprises brought low, not by enemies at the gate, but by administrators within who, like petty Napoleons, mistake tactical evasion for strategy. The application invites the court to consider whether the machinery of insolvency law is being deployed for its intended purpose or merely as a shield against the ordinary consequences of a final judgment. It raises important questions concerning the proper threshold for injunctive relief, the status of undisputed judgment debts, and the limits of procedural protection when insolvency processes are used to pressure payment.

Background Facts

[2] The material facts giving rise to this application are largely undisputed. On 12 July 2024, the Sessions Court at Kuala Lumpur, in Suit No. WA-B52NCC-21-01-2023, entered judgment against the applicant, Allianz General Insurance Company (Malaysia) Berhad, ordering it to pay

the respondent, Gham Poh Chai, who was the insured under a private vehicle policy, the sum of RM208,500 together with interest at the rate of 5% per annum and costs of RM12,000.

[3] Subsequently, correspondence between parties ensued concerning the mechanism of payment. On 23 July 2024 and again on 7 October 2024, the applicant requested the respondent to complete an E-Transfer Form and to furnish his income tax number, purportedly as part of an internal payment requirement. The respondent eventually complied on 8 October 2024. Despite this, the applicant did not make payment, and continued to request additional documents, asserting that the claim involved a vehicle classified as "beyond economic repair" ("BER"), and that such documents ("BER documents") were required under the applicable insurance policy and guidelines issued by Bank Negara Malaysia ("BNM") on 1 July 2024.

[4] The respondent nevertheless took the position that the judgment had been obtained through a court process, and that the applicant was under a legal obligation to comply with the judgment regardless of any unresolved insurance formalities. On 30 November 2024, the respondent issued a statutory notice pursuant to s. 466(1)(a) of the Companies Act 2016 ("CA 2016") demanding payment of the judgment sum. The said statutory notice was received by the applicant on 5 December 2024.

[5] By letter dated 23 December 2024, the applicant reiterated its demand for the BER documents to be furnished. Without issuing any specific denial to the statutory demand and apprehending that a winding-up petition might imminently be presented, the applicant filed this originating summons on 26 December 2024 seeking urgent relief in the form of a *Fortuna* injunction. The applicant contends that the presentation of such a petition would constitute an abuse of the court's process and inflict irreparable harm upon its commercial standing and reputation.

[6] The initial hearing fixed on 28 January 2025 was adjourned following the elevation of my learned brother, Ahmad Fairuz bin Zainol Abidin J, to the Court of Appeal, whereupon the matter was transferred to my court.

[7] The matter came up for hearing on 25 March 2025, during which the parties were partially heard. The hearing was then adjourned to allow for settlement discussions. No interim injunction was granted at that stage, as the respondent informed the court that it had not yet obtained the requisite written approval from BNM to present the intended winding-up petition. As the parties were unable to reach a resolution, the application was heard in full on 23 April 2025. Upon careful consideration of the submissions advanced and the applicable legal framework, I delivered my decision on 19 May 2025, dismissing the application with costs of RM10,000. These grounds are now prepared pursuant to the applicant's notice of appeal dated 9 June 2025.

A **Issues**

[8] The court must determine the following issues:

(i) whether the intended petition has no chance of success; and

(ii) whether such petition might produce irreparable damage to the
B applicant.

Counsels' Contentions

Applicant's Contentions

[9] The learned counsels for the applicant, Thayakugan a/l Rajendram
C and Sabrina binti Mohamed Ameen submit that the debt in question remains disputed, as payment is contingent upon compliance with BNM's regulatory requirements and the furnishing of certain documents related to the underlying BER documents.

D **[10]** It is argued that the statutory demand issued by the respondent is a tactical move designed to exert undue pressure on the applicant to make premature payment, notwithstanding the unresolved issues, thereby amounting to an abuse of the court's process, as cautioned in *Fortuna Holdings Pte Ltd v. The Deputy Commissioner Of Taxation Of The Commonwealth Of*
E *Australia* [1978] VR 83.

[11] Counsels further submit that the respondent's intended winding-up action is vitiated by a fundamental procedural irregularity. Specifically, the respondent has failed to comply with the mandatory requirement under s. 195 of the Financial Services Act 2013 ("FSA"), which stipulates that
F written approval from BNM must first be obtained before any winding-up proceedings may be initiated against a licensed financial institution. It is contended that the absence of such prior approval renders the statutory notice invalid, thereby tainting any subsequent winding-up petition and constituting an abuse of the court's process.

G **[12]** In support, reliance is placed on *Pacific & Orient Insurance Co Bhd v. Mazlan Ahmad & Ors* [2016] 2 CLJ 444; [2015] MLJU 764, where Wong Kian Keong JC (as His Lordship then was) held that s. 195 prohibits not only the filing of a winding-up petition but also the issuance of a statutory notice where BNM's written approval has not been obtained. In that case, the court
H granted a *Fortuna* injunction on the basis that the statutory notice itself was issued in breach of s. 195.

[13] Counsels further contend that the eventual presentation of a winding-up petition would inflict serious and irreparable damage to its reputation and commercial standing, particularly given its position as a licensed insurer
I whose business depends significantly on maintaining public confidence, citing *Setia Fontaines Sdn Bhd v. Pro Tech Enterprise Sdn Bhd* [2023] 5 CLJ 814; [2023] 12 MLJ 324 (per Anand Ponnudurai J) in support.

Respondent's Contentions

[14] Learned counsel for the respondent, Melissa Kaur Manakh a/p Ram Singh takes the position that the debt is not in dispute, as it stems from a final judgment of the Sessions Court. Citing *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* [2011] 1 CLJ 947 per Ramly Ali JCA (as His Lordship then was), counsel submits that a judgment debt cannot be the subject of a *bona fide* dispute unless it has been stayed or set aside, which is not the case here.

[15] Learned counsel further contends that the statutory demand constitutes a lawful and legitimate means of enforcing a judgment debt and does not amount to an abuse of process. It is submitted that the requirement for BER documents was neither raised nor adjudicated upon during the Sessions Court proceedings and thus forms no part of the judgment subsequently entered. In light of the applicant's continued failure to satisfy the judgment debt, the respondent maintains that the applicant is, on the face of the record, deemed unable to pay its debts within the meaning of s. 466 of the CA 2016.

[16] In relation to s. 195 of the FSA, learned counsel submits that the requirement for BNM's prior written approval arises only at the stage of presenting a winding-up petition, and that this does not render the statutory notice itself invalid.

[17] Counsel for the respondent further contends that the applicant's assertions of reputational harm are immaterial in the context of an undisputed judgment debt. The application for a *Fortuna* injunction is therefore viewed as a strategic delay, aimed at thwarting the respondent's exercise of its lawful statutory rights.

Court's Findings

General Principles

[18] The *Fortuna* injunction is derived from the Australian case of *Fortuna Holdings Pte Ltd v. The Deputy Commissioner Of Taxation Of The Commonwealth Of Australia* (*supra*) where it is essentially a prohibitory injunction catered to restrain the presentation of a winding-up petition or prohibiting further steps in an existing winding-up petition with the aim of prevention of abuse of the process of court.

[19] The Court of Appeal in *Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd* [2007] 3 CLJ 295; [2007] 3 MLJ 316 per Gopal Sri Ram JCA (as His Lordship then was) approved the principles enunciated in *Fortuna* case. The applicable principles were then succinctly summarised in the case of *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* (*supra*), wherein an applicant seeking a *Fortuna* injunction will have to satisfy the following:

(i) first branch of the principle:

(a) the intended petition has no chance of success, as a matter of law as well as a matter of fact; and

(b) the presentation of such petition (which has not chance of success) might produce irreparable damage to the company.

(ii) second branch of the principle:

(a) whether a petitioner proposing to present a petition has chosen to assert a disputed claim, by a procedure which might produce irreparable damage to the company, rather than by a suitable alternative procedure.

Issue (i): Whether The Intended Petition Has No Chance Of Success

Effect Of BNM's Claims Settlement Practices

[20] The first ground advanced to show that the intended petition has no chance of success is the respondent's alleged failure to comply with the applicant's request for documentation relating to the classification of the vehicle as beyond economic repair (BER). In support, reliance is placed on the decision in *Affin Bank Bhd v. Datuk Ahmad Zahid Hamidi* [2005] 1 CLJ 521, where the High Court affirmed that compliance with BNM guidelines is necessary before certain transactions may proceed. On this basis, the applicant contends that the respondent was not entitled to issue a statutory notice under s. 466(1)(a) of the CA 2016 until the requested documents were furnished.

[21] It is argued that while the Sessions Court judgment fixed the quantum payable, it was silent as to the method of payment, which, according to the applicant, ought to be governed by the applicable BNM guidelines. In this regard, the applicant refers to the document marked as exh. LFW8 in encl. 2, namely the claims settlement practices guideline issued by BNM on 1 July 2024, bearing reference BNM/RH/PD 029-69. The applicant submits that payment of the judgment sum is conditional upon compliance with this guideline.

[22] Upon examining the guideline, it is noted that it was issued pursuant to ss. 47(1), 123(1), and 143(2) of the FSA, which empower BNM to prescribe standards of business conduct for licensed insurers and takaful operators. Its stated objective is to promote fair, timely, and transparent claims settlement practices. However, its scope is clearly directed at regulating the handling of claims during the ordinary course of insurance operations.

[23] A careful examination of the relevant clauses in the BNM claims settlement practices shows that, while an insurer may require the claimant to furnish supporting documents before disbursing payment, this requirement

presupposes that the claim is still under evaluation and has not yet been adjudicated. Once the matter has proceeded to court and culminated in a final judgment, the insurer's discretion to accept or reject the claim ceases to operate. The original claim is effectively replaced by the judgment, which crystallises the insurer's liability. Compliance with that judgment is no longer contingent upon outstanding documentation, and any attempt to impose such a condition post-judgment is contrary to the finality of the court's decision. Therefore, I am of the considered view that the applicant's reliance on BNM's claims settlement practices guideline to justify withholding payment of a judgment sum is, with respect, misconceived.

[24] Further, the judgment in question was delivered on 12 July 2024, in a suit filed as early as 10 January 2023. It is clear that the guideline which was issued on 1 July 2024 did not form part of the evidential or legal framework during the Sessions Court proceedings, nor could it have been raised or considered by the trial court when determining liability. The applicant cannot now retroactively invoke a regulatory guideline issued after the close of pleadings and shortly before judgment to impose fresh conditions on its obligation to comply with the court's order. Once judgment is entered, the duty to satisfy it arises from the judgment itself, not from subsequent administrative or regulatory instruments.

Effect Of s. 195 Of The FSA

[25] The second issue raised in respect to the chance of success is the effect of s. 195 of the FSA which bars presentment of a winding-up petition without written consent from BNM. For ease of reference, s. 195 states as follows:

> Winding up by High Court on application by persons other than Bank
>
> 195. (1) *No application for the winding up of an institution or approved person may be presented to the High Court by any person without the prior written approval of the Bank.*
>
> (2) Subject to subsection (1), *where an application for the winding up of an institution* or approved person *is presented to the High Court by a person other than the Bank -*
>
> (a) that person *shall deliver a copy of the application to the Bank at the same time as it is presented;* and
>
> (b) *the Bank shall be party to the winding up proceedings and shall be entitled to appear and be heard in all proceedings relating to the application and to call, examine and cross examine any witness.*
>
> (3) Any person who contravenes subsection (1) or paragraph (2) (a) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or to both.
>
> (emphasis added)

[26] In support, the applicant relies on the High Court decision in *Pacific & Orient Insurance Co Bhd v. Mazlan Ahmad* [2016] 2 CLJ 444; [2015] MLJU 764. In that case, the court accepted the argument that issuing a statutory demand without first obtaining BNM's written approval was impermissible under s. 195 of FSA. On that basis, a *Fortuna* injunction was granted to restrain the presentation of a petition.

[27] With respect, I find that decision distinguishable. In *Pacific & Orient Insurance Co Bhd v. Mazlan Ahmad* (*supra*), the applicant had, upon receiving the statutory notice, expressly alerted the respondent to the requirement for prior approval under s. 195. In response, the respondent made clear that it did not intend to obtain such approval and would proceed with the petition regardless. The facts therefore disclosed a direct and deliberate intention to bypass the statutory safeguard.

[28] In contrast, no such correspondence or clarification was sought in the present case. Upon receipt of the statutory notice, the applicant remained silent on the issue of s. 195. No inquiry was made as to whether the respondent intended to comply with the same. Instead, the applicant appears to have assumed, without basis, that the respondent would proceed unlawfully. This assumption, made without any effort to clarify the respondent's position, now forms one of the basis of the applicant's attempt to restrain the respondent's statutory rights. There is a certain irony in this approach. While the applicant invokes the regulatory safeguard of s. 195, its conduct as well as its late filing for injunctive relief suggests a more tactical aim to gain advantage from silence, rather than any genuine concern with statutory compliance.

[29] A close reading of s. 195 confirms that it does not prohibit the issuance of a statutory demand under s. 466(1)(a) of the CA 2016. It only prohibits the "presentation" of the winding-up petition itself. Subsection (3) criminalises the act of the presentation of a winding-up petition without BNM's approval but makes no mention of preliminary steps such as the issuance of a statutory demand. The distinction between a statutory demand (*ie*, winding-up notice) and the presentment of the winding-up petition itself is significant:

(i) a winding-up notice under s. 465(1)(e) and s. 466(1)(a) of the CA 2016 is a preliminary step that demands payment of a debt. It serves as evidence of a company's inability to pay its debts, should it fail to respond within 21 days; and

(ii) a winding-up petition, on the other hand, is the formal process of commencing winding-up proceedings before the High Court by way of a petition "presented at the office of the Registrar" under r. 23 of the Companies (Winding-Up) Rules 1972.

[30] In *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* (*supra*), the Court of Appeal affirmed that a judgment debt gives rise to a statutory demand unless there is a stay or set-aside. While that case did not deal with s. 195 of the FSA, it supports the proposition that the demand itself is a distinct procedural step.

[31] Accordingly, s. 195 does not prohibit the respondent from issuing the statutory notice in this case. What it prohibits is the presentation of a winding-up petition without first obtaining the prior written approval of BNM. Should the respondent proceed to file a petition without such approval, that step may then be challenged and, if warranted, injuncted and/or set aside. At this juncture, however, no petition has been filed or is shown to be imminent. Section 195 cannot therefore be invoked to invalidate the statutory notice or to restrain the respondent from exercising its statutory entitlement to serve the notice and seek BNM's approval in due course for the presentation of the intended petition.

[32] This conclusion is further reinforced by the recent Federal Court decision in *V Medical Services M Sdn Bhd v. Swissray Asia Healthcare Co Ltd* [2025] 4 CLJ 282; [2025] 2 MLJ 744 per Nallini Pathmanathan FCJ. In that case, the Federal Court affirmed that a *Fortuna* injunction may only be granted where there is a *bona fide* dispute on substantial grounds. Although the case concerned the interplay between arbitration and insolvency, the principle remains applicable. The jurisdiction to wind up a company cannot be restrained merely because the debtor raises a technical or procedural objection that does not go to the existence of the debt. The judgment debt in the present case is final and undisputed. The applicant's complaints regarding method of payment, regulatory compliance, or reputational harm do not constitute a genuine dispute over the debt. There is therefore no proper basis to grant injunctive relief.

Issue (ii): Whether Such Petition Might Produce Irreparable Damage To The Applicant

[33] The applicant argues that the presentation of a winding-up petition would cause irreparable harm to its reputation, particularly given its position as a reputable insurance company. However, it is trite that where a debt is not genuinely disputed, and especially where it has been confirmed by final judgment, the argument of irreparable harm cannot succeed. This position is clearly established in *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* (*supra*), where the Court of Appeal held that once a debt is confirmed by judgment, an application for a *Fortuna* injunction must fail. The test for such an injunction requires two limbs to be satisfied: first, that the intended petition has no real prospect of success; and second, that it would cause irreparable harm. Where the first limb is not satisfied, the second becomes irrelevant.

[34] Even if the second limb were to be considered, the applicant's complaint amounts to no more than a general fear of reputational damage. As observed by Abdul Hamid Mohamad JCA (as His Lordship then was) in *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd* [2002] 3 CLJ 380; [2002] 3 MLJ 49, such concerns are insufficient. The so-called irreparable harm is speculative and does not alter the legal reality that a judgment debt remains unpaid. The Court of Appeal in that case described these fears as the usual apprehensions of losing business, goodwill, customers or suppliers. The answer to such fears is straightforward: settle the judgment debt.

[35] Moreover, the applicant has not provided any concrete proof of solvency or shown that it is in a financial position to immediately satisfy the judgment. While it may be tempting to assume that an insurance company, by virtue of their size and declared assets, are financially sound, such assumptions carry little legal weight. The test for commercial solvency is not based on balance sheet strength or theoretical asset values, but on whether the company can meet its debts as they fall due. It is well-settled that a company may appear robust on paper yet still be commercially insolvent if it withholds payment of a clear and immediate liability. Where a final judgment has been entered, the obligation to pay is immediate, and attempts by insurers to delay compliance through procedural manoeuvring or regulatory technicalities cannot be condoned.

[36] In short, the applicant cannot simultaneously claim to be solvent and willing to pay, while refusing to honour a final judgment. As observed in *Kris Heavy Engineering & Construction Sdn Bhd v. Lewis & Co* [2017] CLJU 964; [2017] 1 LNS 964; [2017] MLJU 906 per Mohd Nazlan Mohd Ghazali J (as His Lordship then was), solvency is no defence where the company is nevertheless not ready, willing and able to satisfy the debt. If the applicant seeks to avoid the consequences of winding up, the proper course is to pay the amount adjudged as due. The court cannot permit a party to shield itself behind reputational concerns when the legal obligation to pay has been finally determined.

[37] The present application bears the familiar hallmarks of a tactical response, invoking procedural devices not out of genuine legal necessity, but to defer payment and frustrate enforcement. The *Fortuna* injunction is thus characterised as a calculated manoeuvre to delay the respondent's lawful exercise of statutory rights under the guise of preserving corporate reputation.

[38] Accordingly, I find no basis to conclude that irreparable harm justifies the grant of an injunction in the present case. The debt is clear and undisputed. The supposed reputational injury, even if genuine, does not override the respondent's statutory right to pursue enforcement of a final judgment through the winding-up process.

Decision

[39] Having considered the evidence and submissions, I am not satisfied that the applicant has established any *bona fide* dispute in respect of the judgment sum. The debt is clear, final, and remains unsatisfied. The mere assertion of reputational harm or regulatory procedure cannot displace the respondent's statutory entitlement to enforce a judgment through winding-up proceedings. In light of these findings, the application for *Fortuna* injunction in encl. 1 is dismissed with costs of RM10,000.

[40] Following the pronouncement of this court's decision dismissing the application in encl. 1, learned counsel for the applicant made an oral application for an *Erinford* injunction pending appeal. I find no real risk of injustice that would justify the grant of such relief. The applicant, being a licensed insurer, is already subject to a regulatory framework that affords it substantial protection. Under s. 195 of the FSA, no winding-up petition may be presented against it without the prior written approval of BNM, which functions as a regulatory gatekeeper. Should the regulator consider that compliance with internal documentation, including the BER requirement, remains necessary notwithstanding a final court judgment, it retains full discretion to withhold its approval. These safeguards are statutorily embedded and sufficiently robust. There is, therefore, no proper basis for this court to grant an additional layer of judicial restraint through an *Erinford* injunction. The oral application is accordingly refused.